

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DERON NIXON,

Defendant.

Criminal No. 11-0045-017

Civil No. 14-cv-00821

ELECTRONICALLY FILED

MEMORANDUM ORDER OF COURT RE: CERTIFICATE OF APPEALABILITY

On July 10, 2014, this Court denied *pro se* Defendant's Motion to Vacate his 170 month sentence of imprisonment pursuant to 28 U.S.C. § 2255. Doc. No. 1363. The Court has also denied Defendant's subsequent Motion for Reconsideration. Doc. No. 1370. Defendant has appealed this Order to the United States Court of Appeals for the Third Circuit. Doc. No. 1374. This Court has been instructed by the Clerk of the United States Court of Appeals for the Third Circuit to issue a certificate of appealability or state why a certificate of appealability should not issue. Doc. No. 1376.

A certificate of appealability should not issue pursuant to 28 U.S.C. § 2253 because Defendant has not made a substantial showing of a denial of a constitutional right. As set forth more fully in the Court's Order denying Defendant's Motion to Vacate (Doc. No. 1363), Defendant pled guilty to a lesser included offense at Count I of the indictment, pursuant to a plea agreement, and was sentenced by this Court to 170 months imprisonment, which was below the applicable advisory guideline range. This Court conducted an extensive colloquy prior to Defendant's change of plea and his sentencing and found that Defendant knowingly and

voluntarily waived his right to a jury trial and his right to appeal his sentence except in certain specific circumstances, which do not apply. Therefore, Defendant has not demonstrated that reasonable jurists would find the Court's denial of his Motion to Vacate debatable or wrong. As such, this 30th day of September, 2014, IT IS HEREBY ORDERED THAT no certificate of appealability should issue.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties

Deron Nixon
USP Canaan
Reg. No. 32792-068
P.O. Box 300
Waymart, PA 18482